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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,896	08/27/2003	Volker Block	304-813	5101
30448	7590	07/14/2004	EXAMINER	
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			GONZALEZ, MADELINE	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/648,896	BLOCK ET AL.	
	Examiner	Art Unit	
	Madeline Gonzalez	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/28/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claim 12 is objected to because of the following informalities:
 - a) Claim 12: The claim recites the limitation “said base member” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Napoli et al. (U.S. 5,106,203) [hereinafter Napoli].

Napoli discloses a device for determining the temperature of a flowable medium, as shown in Fig. 2, wherein said medium flows through a duct 215 with a cross-section, said device having:

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- a temperature sensor 200 and a probe body, wherein said probe body has several elongated probe sections, wherein said probe sections extend into said duct 215, wherein said temperature sensor 200 is arranged on said probe body with thermal contact;
- wherein said probe sections extend through said entire cross-section of said duct 215;
- wherein said probe sections are straight and parallel;
- wherein said probe sections are equidistant to one another;
- wherein said probe sections are rod-like;
- wherein said probe sections are spaced from one another with free gaps, said free gaps between two adjacent of said probe sections being roughly of the order of magnitude of the extension of said probe sections at right angles to a flow direction of said medium;
- wherein there is a flow cross-section for said medium through said probe sections and said probe sections have an end face in said duct 215, wherein said flow cross-section is roughly as large as the sum of said end faces of said probe sections in said duct 215; and
- wherein said probe sections extend in said medium flow direction about the same as at right angles thereto.

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4. Claims 1 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mayer et al. (U.S. 5,277,496) [hereinafter Mayer].

Mayer discloses a device for determining the temperature of a flowable medium, as shown in Fig. 1, wherein said medium flows through a duct with a cross-section, said device having:

- a temperature sensor 26 and a probe body, wherein said probe body has several elongated probe sections 12, 14, wherein said probe sections 12, 14 extend into said duct, wherein said temperature sensor 26 is arranged on said probe body with thermal contact;
- wherein on one side said probe body has a base member 21 from which said probe sections 12, 14, project and said base member 21 only extends slightly into said duct;
- wherein said probe sections 12, 14 are connected in one piece with said base member 21;
- wherein said probe body of said base member 21 and said probe sections 12, 14 is entirely made in one piece;
- wherein said temperature sensor 26 is located on said base member 21; and
- wherein said temperature sensor 26 is placed on said base member 21 outside said duct.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 14-18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Napoli (U.S. 5,106,203) in view of Finney (U.S. 3,874,239).

Napoli discloses all the subject matter claimed above in paragraph 3 with the exception of a heater.

With respect to the heater: Finney discloses a heater having a wall 35 and a heat transfer member 37, and a temperature sensor 41 connected to the member 37, said heating element can

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be a thick film element. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to connect the device disclosed by Napoli to a heater as taught by Finney in order to monitor the temperature of the heat transfer element.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lenz et al. ('700), Bourigault, Benedict, Werneth and Sanderson disclose related device for measuring the temperature of a flowable medium.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



Diego F.F. Gutierrez
Supervisory Patent Examiner
Technology Center 2800